

**REPORT OF MENTAL HEALTH AND MENTAL
HABILITATION PANEL COMMITTEE
(Submitted March 2012)**

I. Introduction

Chief Judge Rufus King III issued Administrative Order 03-20 that established an Ad Hoc Committee for the purpose of creating panels for the representation of individuals who are the subject of Mental Health and Mental Habilitation proceedings in the District of Columbia Superior Court. The Committee, in consultation with the Presiding and Deputy Presiding Judges of the Family Court, was tasked with recommending to the Chief Judge of the Superior Court a panel from which appointments would be made for representation of individuals who are subjects of Mental Habilitation proceedings. In determining which applicants were best qualified for appointment to the Mental Habilitation Panel, the Committee sought the views of other judicial officers, including present and past members of the Family Court, Senior Judges and Magistrate Judges. In addition, the Committee had the benefit of two members with experience presiding over the Mental Habilitation calendar as well as several members with significant Family Court experience.

II. The Application Process

Attorneys interested in the Mental Habilitation Panel were encouraged to apply by filing an application with the Panel Committee. Information regarding the application process and a copy of the application were posted on the D.C. Superior Court's website throughout the application period.

In addition to names, addresses and phone numbers, new and former applicants were asked to provide the following information:

1. Their educational background, including each law school and college attended, including the date of attendance and degrees awarded, and describe any honors received or significant activities, or work, in which they were involved at these institutions;
2. Whether they were a member in good standing of the District of Columbia Bar and any other Bar which they are members as well as all courts to which they have been admitted to practice and the dates of admission;
3. Their work history since graduation from law school;
4. Their work experience that may be of assistance in assessing their qualifications;
5. Legal education programs they have attended or taught within the last five years
6. Course work or clinical training they have attended concerning the law of evidence, expert witnesses, and/or trial practices;
7. Their litigation experience;
8. Identifying up to five Superior Court judicial officers with information about their qualifications to serve on the panel;
9. The number of cases in which they served as counsel in mental health and/or mental habilitation;
10. The number of mental habilitation cases where they served as counsel or guardian *ad litem*;
11. Description of their work in no more than five mental health or mental habilitation cases in which they served as counsel;

12. Whether, since admission to the D.C. Bar, they had ever been convicted of a crime carrying a potential sentence of 180 days or more in prison, been sued by a client, been the subject of disciplinary proceedings, or been cited for a breach of ethics or unprofessional conduct in the District of Columbia or elsewhere;
13. Any other information they believed might be of assistance in assessing their qualifications.

All applicants were required to submit a Certificate Concerning Discipline from the Office of Bar Counsel. Finally, applicants were required to provide a written authorization to release records.

The Committee considered a total of seventy-four (74) applications for the panel. The Committee originally received 42 applications during the initial application period for the panel in 2004, from which the Committee identified twenty-seven (27) attorneys as qualified to be members of the panel. However, given our recognition of the need for a greater number of qualified attorneys for mental habilitation cases, we recommended the reopening of the panel application process to the Chief Judge. See December 2008 Report of the Mental Health and Mental Retardation Panel Committee. The Committee was aware that mental habilitation cases present a need for continuity in representation, since the habilitation cases may remain open throughout an indefinite period of commitment, with reviews held in court on an annual basis. Additionally, many of the attorneys that were involved in mental habilitation cases either did not apply for the panel initially or were not recommended by the Committee, which created a challenge of assuring appropriate representation on a continuing basis with panel-certified attorneys. In an effort to develop a panel of attorneys that is able to handle all current mental habilitation cases, pursuant to the Committee's recommendation, the Chief Judge addressed

several issues that had been raised by attorneys regarding continued representation (including compensation issues) and permitted the Committee to re-advertise for the panel. This process resulted in some additional applications, and thus, a total of 74 applicants were considered by the Committee.

III. Evaluation of Applicants by the Committee

The Committee consisted of six Associate Judges and two Magistrate Judges. The vast majority of the Committee members have substantial Family Court experience. Several members of the Committee had extensive experience in mental health and mental habilitation cases. In order to gather broad judicial input on the applicants, all associate judges, senior judges and magistrate judges were asked to evaluate all applicants with whom they were familiar, electronically through an evaluation system. The evaluations were to be based on the judicial officer's personal knowledge of the applicant's competence and the quality of the applicant's work, whether or not it was related to the work performed on mental health or mental habilitation cases. The evaluation form gave judicial officers the opportunity to award specific grades to each applicant. Judicial officers were also encouraged to provide comments, of any length, concerning each applicant in addition to the grade awarded. The judicial officers were assured that the Court and the Committee would keep their grades and comments confidential. The Committee received additional comments from judicial officers who were aware of the applicant and wished to communicate a recommendation or who were listed by the applicant as a reference and were thereafter contacted by a Committee member.

IV. Panel Evaluation and Selection Process

Prior to meeting to discuss the qualifications of the individual applicants, each Committee member was assigned a number of applicants to review and present to the entire Committee. Members received a copy of the applicant's file as well as a summary of the judicial evaluations for each applicant. The judicial evaluations included a letter grade and comments made by any member of the judiciary who was familiar with the applicant's work.

The Committee met over several days, with each Committee member presenting their assigned applicants by summarizing their applicants' background and experience, highlighting their work in the relevant field, and conveying information provided by other judicial officers. Following discussion based on all available information, a decision was made on whether a particular applicant should or should not be placed on the panel. Based on the applicant pool and the fact that many applicants had no prior experience in mental habilitation cases, the Committee thought it appropriate to appoint some applicants as "provisional" members of the panel. Applicants appointed to the panel as provisional members would be required to apply for full member status after two years. This approach would allow the Committee to review the applicant's performance during the two year period and to consider whether the applicant should be designated as a full member of the panel at the end of the provisional period. The Committee recommends that provisional members participate in continuing legal education and training programs that may enhance their representation of persons in the mental habilitation system of care.

The Committee was also asked to consider six applicants that were employed by University Legal Services. University Legal Services has provided representation to Evans class members for several years and has also had at least one attorney employee who has been

engaged in the appointed representation of individuals in mental habilitation cases. The Committee was concerned about the potential conflict of interest in cases where University Legal Services represented an Evans class member as both a member of the class and in the person's individual commitment case. University Legal Services submitted an ethical opinion addressing this concern, in an effort to persuade the court to permit such dual representation. The Committee considered all available information and concluded that the best approach would be to limit appointment of the University Legal Services employed attorneys to cases that did not involve Evans class members. University Legal Services has agreed to this proposed approach, and thus will receive appointments in mental habilitation cases that do not involve their representation in the Evans litigation.¹

V. Conclusion

Therefore, we are submitting the Mental Habilitation Panel list to you for action, and would be pleased to draft an Administrative Order upon your approval.²

Respectfully submitted,

/s/

Associate Judge Ann O'Regan Keary, Co-chair

/s/

Associate Judge Milton C. Lee, Jr., Co-chair

¹ University Legal Services panel members will be denoted with an asterisk to indicate that they will be appointed to non-Evans class members cases only.

² The Committee also considered the fact that the University of Legal Services' Executive Director has already been representing, and wished to continue representing, two individuals who are Evans class members. The Committee, with one dissenting vote, concluded that this continued representation should be permitted.

Committee Members: Associate Judge Jennifer Anderson
Magistrate Judge Diane Brenneman
Associate Judge Linda Kay Davis
Magistrate Judge Joan Goldfrank
Associate Judge John Mott
Associate Judge Michael Ryan

Panel Members

Linda Aikens
Glenn Angelo
Michael T. Barry
Ashok Batra
Pierre Bergeron
Sandra Bernstein*
Elizabeth Rodella Berry
Yael Cannon
Charles Canty
John Connelly
Joel Curtis
Thomas Devlin
Robert Dinerstein
Donald Exner
Myrna Fawcett
Charles Fitzpatrick
Joan Gauche
Herbert Gutterman
Jane Hammitt
John Howard
Joseph Jose
Patrick Knight
Desiree Knights-Taylor
Isaac Kunnirickal
Jennifer Lav*
Robert Lavine
Erin Leveton*
Judith Lovelace
Howard Margulies
Roger Middleton
Ronald Mitchell
Janice Moore
Marquita Moya
Lisa Orlow
Lucy Osakwe
Aaron Price
Marc Resnick
Steven Schiff
Jennie Shamey
Betty Sinowitz
James Sullivan
Richard Toth
Shawn Ullman*
Kelly Venci

Morgan Whitlatch

Provisional Panel Members

Francis Barikor
Nakeisha Blount
Mary Clark*
Joy Freeman-Coulbary
Laura Flegel
Laura Goodson
Akua Gyimah-Brempong*
John Hoppe
James Loots
Godwin Oyewole
Bernard Raiche
Richard Tappan
Ronald L. Thomas
James G. Turner
Russell Twist
Karen Walker